IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8010 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MCM HOTEL PVT LTD

Versus

GUJARAT STATE FINANCIAL CORPN

Appearance:

Special Civil Application No. 8010 of 2000

MR AMAR P DAVE for Petitioners

MR BHARAT T RAO for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

MR AJ PATEL for Respondent No. 6

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 18/10/2000

CAV JUDGEMENT

1. Heard learned counsel for the parties. Rule. Mr. B.T. Rao and Mr. A.J. Patel, waives service of rule on behalf of respective respondents in the petition.

2. The petitioner M/s. MCM Hotels Private Limited is a Private Limited company registered and incorporated under the provisions of Indian Companies Act, 1956, and engaged in the business of running a hotel and restaurant. The second petitioner is the promoter and Managing Director of the petitioner Hotel (Company). The petitioner applied for term loan to the respondent Corporations and the Respondent No.3 Corporation sanctioned term loan of Rs. 41.06 lacs, the respondent No.1 Corporation sanctioned term loan of Rs.51.76 lacs in the year 1987-88. The said term loans were sanctioned in view of the mortgage of the hotel properties of the Company with the respondents Corporations. The project cost of the hotel was more than Rs. 3.65 Crore. In addition to the loan amount, petitioner No.2 has also invested huge amount in the business. The petitioner Company regularly paid term loan installments and interest thereof to the respondents Corporations from 1991 to 1993. In 1994 petitioner Company suffered huge loss on account of complete damage of the hotel property, assets and business because of the severe flood. The petitioner Company was sanctioned a sum of Rs.9.5 lacs by the Insurance Company which was paid to the respondents. In the flood of 1994 the petitioner Company suffered great loss and went into make losses on account of non renovation of the hotel property. Because of the aforesaid unfortunate event, the petitioner was unable to pay installments to the respondents Corporations, which were due during the said period. However petitioner Company mad repeated representations to the respondents Corporations for reviving the sagging business, but the respondents Corporations did not approve the rehabilitation proposal of the petitioner by investing some amount. If that was granted, the financial position of the petition Company could have been recovered and could have also ensured the repayment of the loan amount to the respondents Corporations. In 1996 a one time settlement agreement was reached between the petitioner and respondents Corporations for making total payment of Rs.123-00 lacs to both the Corporations. The said agreement was extended from time to time by the concerned Corporations. However in December 1997 the respondents Corporations took over possession of the hotel property of the petitioner Company without giving any notice or advance intimation. Said action of the respondents Corporations put the petitioner Company into further loss. The petitioner thereafter paid a sum of Rs. 12.5 lacs in view of the one time final settlement reached between the parties and the possession was restored to the petitioner.

2. The respondents Corporations thereafter again took possession on 19-6-1999 of the property of the petitioner and after that, the petitioner could not revive the business, the reputation amongst its regular customers diminished on account of stopping the business and thereafter there was no generation of income at all. However, inspite of having no source of income and also having suffered heavy losses, the petitioner paid a sum of Rs.30-00 lacs to the respondents Corporations against the said one time settlement. Copy of the one time settlement has been annexed and marked as Annexur-B to the petition. In the meantime the petitioner continued its efforts for reviving the business by trying to get into a joint venture arrangement with various NRI Groups. When the negotiations were in progress for revival of the petitioners unit, the respondents abruptly issued a notice for auction of the hotel property in the newspapers. The respondents were regularly informed by various communications about consistent efforts being made by the petitioners to get investors to revive the project/ hotel and it was within the knowledge of the respondents Corporations. Personal assurance by the prospective investors were also made known to the Corporations. Petitioners requested the respondents Corporations from time to time not to auction the said property and to allow some time to arrange for investment by joint venture partner. The petitioner also proposed to the respondents Corporations that in case the petitioner fails to fulfill the one time settlement, then the Corporations may first proceed to sell the restaurant located on the entire mazzanine floor which is about Rs.132-00 lacs, and to release the remaining property in order to ensure that the Company to get back on the revival track and also to get infusion of funds from such revival from the investors, who were only hesitant in making investment on account of the said possession of the property by the respondents Corporations. The petitioner has not received any response from the corporations regarding the sale of part of the petitioner's hotel . It is alleged by the petitioner that, in spite of the aforesaid developments, the Corporations with pre-determined mind issued advertisement for auction of the said properties without considering the proposals of the petitioner Company.

3. The petitioner in October 1999 was constrained to move this High Court for seeking an appropriate order in connection with the proposed auction advertised by the respondents earlier. The earlier Special Civil Application was disposed of by this Court on 24-4-2000

holding that the same became infructuous, copy of the order is annexed at Annexure-D to the petition. Thereafter, the respondents again issued advertisement on 26-6-2000 for auctioning the hotel properties of the petitioner. It is alleged that some incorrect facts have been stated in the advertisement, and the petitioner immediately brought it to the notice of the respondents Corporations and also requested them not to proceed with the said auction. It is also alleged in the petition that the advertisement issued by the respondents for auction sale of the petitioner's hotel property, prevented the investors from proceeding with the negotiations for revival of the unit . On 27-6-2000 the petitioner received a letter (Annexure-F to the petition) from respondent No.3 calling upon the petitioner to discuss the issue of clearance of arrear. The advertisement was issued before receipt of the aforesaid letter by the petitioner. The bids received by the respondents Corporations in pursuance of the said advertisement were opened on 10-7-2000. After opening of the bids, respondents Corporations entered into negotiations with the bidders and they had arbitrarily finalised the bid amount at Rs.4.51 Crore in favour of M/s. Hotel Oasis. It is submitted that the actual value of the property of the petitioner will be more than Rs. 11-00 Crore, and the Corporations in league with M/s. Hotel Oasis sold the property for a miserably shocking lower price. The petitioner raised various objections with regard to the manner in which the entire process of auction was conducted. Petitioner has also requested to give him an opportunity to make its bid, but the petitioner has not received any response from the respondents Corporations. During the pendency of the petition, the highest bid of M/s. Hotel Oasis was accepted by the Corporations, and an agreement was executed between Hotel Satyaketu and the respondents Corporations on 11-8-2000, and possession was handed over to hotel Satyaketu . In view of the developments the petitioner amended the plaint and alleged that hotel Satyaketu did not participate in the auction, and transfer of petitioners property in favour of Hotel Satyaketu is illegal. The new purchaser has been added as respondent No.6.

4. The petitioners challenge the auction sale on various grounds of which the major grounds are mainly ;

(1) The Guidelines issued by the Apex Court in Mahesh Chandra's case reported in (1993) 2 SCC, 279 has been violated by the respondents- Corporations.

(2) The property was sold at a shocking low price.

(3) The bid was accepted in favour of M/s. Hotel Oasis but the property has been transferred in the name of M/s. Hotel Satyaketu .

(4) No opportunity was given to the petitioners to pay the dues of the respondents - Corporations.

5. The respondents have filed separate counter affidavits. The respondent Gujarat State Financial Corporation and its officials respondent No. 1, 2 and 5 have stated in their counter affidavit that the petitioner has availed an amount of Rs.200.67 lacs as advance from three financial institutions, namely Gujarat State Financial Corporation (GSFC), Gujarat Industrial Investment Corporation (GIIC) and Bank of Maharashtra, and all the three financial institutions have pari passu charge over the immovable and movable properties of the petitioner Company, and the directors of the Company created mortgage in favour of the said three financial institutions. It is further stated that the outstanding dues payable by the petitioner to GSFC is Rs.99.86 lacs, to GIIC Rs.94.38 lacs and Bank of Maharashtra Rs.529.04 lacs. It is also alleged that the petitioner has failed in repayment of loan amount as per the undertaking given by them. It is also alleged that, even after rescheduling the loan mount the petitioner has failed to repay the outstanding. It is also stated that, one time settlement was arrived at between the parties but the petitioner has failed to fulfill the conditions of one time settlement, and therefore the said settlement has been cancelled by the respondents Corporations. It is also submitted that the petitioner has no intention to pay back the loan amount. It is also alleged that all the cheques issued by the petitioner Company towards the repayment of loan has been dishonoured by the Banks. It is further submitted that the Bank of Maharashtra as well as respondents Corporations have valued the properties of the petitioner and according to the Bank, the value of the petitioners properties is Rs.5-00 crore, whereas the respondents Corporations have valued the property of the petitioners at Rs.3,67,58,991-00. It is also stated that, wide publicity was given for sale of the property. Initially highest offer was received from M/s. Metal India, Bombay on 25-2-2000 for Rs.2.73 crore. Although the said offer was accepted by the respondents Corporations, the Bank of Maharashtra did not agree with the offer, as, according to the Bank, the value of the property will be not less than 5 crore. Therefore the

Corporation had cancelled the said offer of M/s. Metal India. Accordingly another advertisement was issued in leading newspapers in June 2000, and in response six offers have been accepted by respondents Corporations. M/s. Hotel Oasis at the time of negotiation offered the highest price of Rs.4.51 crore and the tender committee accepted the said offer. It is also stated in the counter affidavit that the petitioner was asked whether he is agreeable to bid for higher amount than M/s. Hotel Oasis. Instead of making any bid, the petitioner filed objections. It is however admitted by the respondents Corporations that the petitioner assured the Corporations that if he was given time till 2nd week of August, 2000, he will pay 100% dues of the Corporations, but this request was refused by the tender committee. It is also stated that M/s. Nishit Financial Services have quoted offer of Rs.4.65 crore and also agreed to pay the entire amount in cash within 45 days, but his offer was rejected by the tender committee on the ground that he has not deposited 10 % of the security deposit. It is also submitted that, since the petitioner has repeatedly failed to clear the dues, the Corporations have no other option but to realise the same by selling the properties of the petitioner. It is also submitted that no illegality has been committed while selling properties of the petitioner and therefore the petition should be dismissed.

6. Respondents No. 3 & 4 filed counter affidavit in the same lines as has been given by respondents No. 1,2 & 5.

7. Respondent No.6 the new purchaser of the auction bid has filed separate counter affidavit. It is submitted that, after purchase of the property the respondent No. 6 has invested huge amount for renovation of the hotel between period 10-9-2000 to 16-9-2000. It is submitted that, in pursuance of the tender notice respondent No. 6 offered highest amount of Rs.4.51 crore and his offer was accepted by respondents Corporations. It is also stated that, in accordance with the terms & conditions of the acceptance of offer, the respondent no. 6 has paid Rs.1.58 crore and the balance amount is to be paid within five years in twenty quarterly installments. It is submitted that, after payment of Rs.1.58 crore the possession was handed over on 14-8-2000 and he is in possession of the hotel premises from the said date. The respondent no.6 also stated that, he has incurred expenses of Rs.59,51,000/- for renovation of the hotel. It is also stated that, since the respondent no.6 has purchased the property and has obtained possession and

invested huge amount, there is no reason to interfere with the sale and the petition be dismissed.

8. Mr. Amar Dave, learned counsel appearing on behalf of the petitioner submitted that, the petitioner has valued the property sold by respondent GSFC and according to the approved valuer, the price of the property sold by the respondent is worth Rs.11.05 crore. The petitioner has annexed a copy of the Valuation made by the Valuer in the petition. Thereafter the petitioner got the property valued by Government Approved Valuer and the said Valuer valued the property worth more than Rs. 9.00 crore. If the average of the valuations are taken in to consideration then the value of the property come to Rs.9.90 crore. It is submitted by learned counsel that when the properties are under litigation it never fetches the market value and the market value of the properties sold by the respondent GSFC can never come down below Rs.9.90 crore. It is accordingly submitted by Mr. Dave that, inspite of objections by the petitioner, the respondents have sold the property at a throwaway price of Rs.4.51 crore to respondent No.6. It is also submitted by Mr. Dave that, both GSFC and GIIC made one time settlement and according to the one time settlement the petitioner had to pay the sum of Rs.123-00 lacs and there is no reason for the GSFC to sell the entire property for the dues of Rs.80.50 lac, especially when the petitioner agreed to pay the outstanding balance of Rs.80.50 lac, they have sold the property of the petitioner at a shocking low price of Rs.451-00 lacs, and thereby leaving no scope to the petitioner to revive the hotel industry. It is also submitted by Mr. Dave that the respondents should have accepted the payment of Rs.80.50 lac and released the property. When the matter came up for hearing, this Court suggested to the parties to have the matter settled amicably. Mr. B.T. Rao, learned counsel appearing on behalf of GSFC and GIIC did not agree to release the properties on payment of Rs.80.50 lac on the ground that the Bank of Maharashtra has also advanced loan to the petitioner and the loan amount of Rs.89.28 lacs advanced by Bank of Maharashtra has come to Rs.529.04 lac and GSFC is under an obligation to realise the loan amount of Bank of Maharashtra also. Mr. B.T. Rao submitted that the petitioner availed the loan under a consortium finance and the property is mortgaged not only with the GSFC and GIIC but also with Bank of Maharashtra. Therefore unless the petitioner pays the entire dues of GSFC , GIIC and Bank of Maharashtra, they cannot release the property. Mr. Dave learned counsel appearing on behalf of the petitioner however disputed about the outstanding of Bank of

Maharashtra. He also disputed that the petitioner did not avail the loan from the aforesaid three financial institutions on consortium finance basis. It is submitted by Mr. Dave that the petitioner availed loan from GSFC & GIIC after mortgaging the property, but they have independently obtained loan from Bank of Maharashtra and Bank of Maharashtra has also agreed for one time settlement, according to which the Bank of Maharashtra is entitled to get Rs.207.53 lacs. It is also submitted by Mr. Dave that Bank of Mahrashtra has filed a separate suit which is pending before the Debts Recovery Tribunal and the petitioner has paid a sum of Rs.51.84 lacs being the 25 % of the one time settlement. Learned counsel has also annexed letter of the petitioner dated 26th September 2000, from which it appears that, Bank of Maharashtra has accepted the said sum from the petitioner. It does not appear from the record of the case that the petitioner obtained loan under the consortium advance. In this connection the directions of the Reserve Bank of India regarding Consortium Finance may be looked in to. The Reserve Bank of India defined the consortium advance as follows:-

" Where a single loan is granted by more than one financing agency it is called Consortium Advance"

Under the Reserve Bank of India's order, where there is an advance to a single party exceeding Rs.5-00 crore it can be advanced only through a consortium of multiple banks. In the instant case, it appears that GSFC has advanced a sum of Rs.56.01 lac, GIIC advanced a sum of Rs. 41.75 lacs and Bank of Maharashtra a sum of Rs.89.28 lacs; the total comes to Rs.187.04 lacs. Consequently it is evident that the loan advanced by all the three parties did not exceed Rs.5-00 Crore or the three different financial institutions did not sit together before advancing the loan to the petitioner. The loans were independently advanced by GSFC & GIIC but Bank of Maharashtra has independently advanced the loan amount keeping the property as second charge. If the petitioner makes persistent defaults the GSFC is entitled to realise the dues by selling the property. Therefore I am of the view that when the petitioner agreed for clearing the outstanding dues of GSFC and GIIC amounting to Rs.80.50 lacs, the respondent GSFC and GIIC could have given the opportunity to the petitioner to pay the aforesaid amount and release the property so as to enable the petitioner to revive its industry. The Bank of Maharashtra is proceeding separately for realising the amount from the petitioner by filing a suit before the Debts Recovery Tribunal, and if the petitioner fails to

repay the outstanding dues to the Bank of Maharashtra then they will have the liberty to realise the same by sale of the property. So far GSFC and GIIC is concerned, I am of the view that, they should have accepted the offer of the petitioner for payment of Rs.80.50 lacs and release the property. It is also submitted by Mr. Dave that, when the respondents were insisting for sale of the property, the petitioner requested the respondents by letter dated 18-10-1999 to sell the restaurant of the hotel which has the value of atleast Rs.132-00 lacs. It is also submitted by Mr. Dave that the restaurant of the hotel at mazzanine floor has separate entrance and it can independently used by any purchaser. The said request was also made by the petitioner again in their letter dated 9-7-2000 at Annexure-G, but no attempt has been made by the respondents GSFC and GIIC to sell the aforesaid restaurant of the petitioner hotel. Had the respondents sold the aforesaid restaurant it could have easily satisfied the dues of the respondents GSFC and GIIC. Accordingly Mr. Dave submitted that the respondents have committed an illegality in not accepting the offer of the petitioner for selling a part of the property and to release the main hotel from attachment. It is also submitted by Mr. Dave that, the property of the petitioner was severely damaged due to flood in 1994. The petitioner received a meagre sum of Rs.9-00 lacs from the Insurance Company and the aforesaid amount has also been deposited in the account of the respondents. When the petitioner's business was affected in 1994 due to severe damage of the property in the flood, the petitioner requested the respondents to advance further loan for repairing the damaged property, but no such financial assistance was advanced by the respondents. It is also submitted that in 1997 the respondents took possession of the property, but released the same after receiving the payment of Rs.12.50 lacs. The repeated taking over of the property by GSFC has seriously affected the business of the petitioner and for the aforesaid reasons the petitioner could not repay the loan amount to the respondents. It is also submitted by Mr. Dave that the petitioner started negotiations with NRIs and other big hotel industries for reviving the industry, but due to adamant attitude of the respondents Corporations all attempts failed for some time, but the petitioner is still continuing with negotiations and some industries have come forward to revive the industry and they have also agreed to advance the finance to the petitioner. Mr. Dave has submitted one such affidavit of Mr. Basantrao More of Bombay. A settlement has been reached between said Basantrao More and the petitioner to pay the loan amount of GSFC and GIIC and other Government

dues. Mr. More has also forwarded two cheques for payment of Rs.80.50 lacs toward the dues of GSFC and GIIC as per one time settlement and Rs.69.50 lac towards electricity bills and property tax etc. It is submitted in the aforesaid affidavit that these cheques can be drawn at any time as per the order of the Court. Mr. Dave accordingly submitted that, inspite of these facts the respondents Corporations sold the property of he petitioner at a throwaway price. It is accordingly submitted that the respondents Corporations should accept the outstanding dues as per one time settlement and release the property to the petitioner after setting aside the illegal sale conducted by the Corporation.

9. Mr. Dave also drawn my attention of a case law decided by the Apex Court in MAHESH CHANDRA Vs. REGIONAL MANAGER, U.P. FINANCIAL CORPORATION AND OTHERS, reported in (1993) 2 S.C.C. pg. 279. It is submitted by Mr. Dave that, in the aforesaid case the Apex Court has issued the guidelines for the Corporation before selling any property for the outstanding dues. It is submitted by Mr. Dave that the Corporation in complete disregard of the guidelines issued by the Apex Court sold the property of the petitioner. Mr. Dave has drawn my attention to para-10 of the counter affidavit filed by respondents No. 1, 2 and 5. It is submitted by respondent in para-10 of the counter affidavit that, according to earlier advertisement M/s. Metal India of Bombay offered a price of Rs.2.73 crore on 25-2-200 for the entire property of the petitioner. The said offer was accepted by GIIC and GSFC, but Bank of Maharashtra did not agree for sale of the property of the petitioner at Rs.2.73 crore. According to Bank of Maharashtra the value of the property of the petitioner will be more than Rs.5-00 crore . Ultimately the respondents cancelled the offer made by M/s. Metal India of Bombay. It is submitted by Mr. B.T. Rao , learned counsel appearing on behalf of the Corporations that, GSFC has got revalued the property of the petitioner through approved Valuer and the approved valuer has valued the property at Rs.367.50 lacs. Even then it appears that the property valued by the respondents Corporations falls far short of the valuation made by Bank of Maharashtra. The petitioner further submits that the value of the property will not be less than Rs.10-00 crore. It does not appear that the respondents Corporations have intimated the petitioner that they have got the property valued and the valuation of the property has come to Rs.3.67 crore. Therefore Mr. Dave submitted that, the second guideline of the Apex Court has not been followed, as the petitioner was never intimated about the valuation made

by the respondents Corporations. It is submitted by Mr. Dave that the petitioner is consistently submitting to the respondents that the value of the property will not be less than Rs.10-00 crore and the restaurant portion of the hotel property which can easily satisfy the outstanding dues of the respondents Corporations be listed for sale. Consequently Mr. Dave submitted that the 6th guidelines issued by the Apex Court in the Mahesh Chandra's case has also been violated by the respondents Corporations. Mr. Dave has drawn my attention to a letter dated 19-6-2000 at Annexure-F, wherein the GIIC addressed a letter to the petitioner for settlement of outstanding amount of Rs.54.67 lacs as per one time settlement. Mr. Dave also submitted that when the GSFC was proceeding with the auction the another respondent GIIC approached the petitioner by the aforesaid letter for payment of dues as per one time settlement. Learned counsel accordingly submitted that the petitioner has agreed to the request of the GIIC to pay the entire amount of Rs.57-67 lacs and in view of the aforesaid situation it was unjust and illegal on the part of the GSFC to proceed with the auction sale.

10. Mr. Dave has also drawn my attention to a copy of the agreement entered between the respondents Corporations and the auction purchaser. It is submitted that the agreement has been made between the respondents and Hotel Satyaketu. It is submitted and it is an admitted fact that hotel Satyaketu did not submit any tender. The highest offer was made by Hotel Oasis, who had agreed to purchase the property at Rs.4.51 crore. It is submitted by Mr. Dave and admitted by the respondents that one M/s. Nishit Financial Services offered a price of Rs.4.65 crore and also agreed to pay the entire amount at one time. According to the respondents, said M/s. Nishit Financial Services did not deposit the security amount and therefore their tender was rejected. Mr. Dave learned counsel for the petitioner on the other hand contended that GSFC should have considered the highest offer made by Nishit Financial Services, who had agreed to pay the entire amount at a time and the offer of said financial services should not have been rejected by respondents Corporations, as by that offer the petitioner would have got more money. Learned counsel for the petitioner feels that, there must be some understanding between GSFC and hotel Satyaketu and the GSFC have shown undue favour to respondent No.6 - hotel Satyaketu. It is an admitted fact that hotel Satyaketu did not participate in the tender and the terms of payments to hotel Satyaketu do not appear to be reasonable in view of the fact that one purchaser offered to pay the entire amount

at a time. The GSFC has allowed respondent No. 6 hotel Satyaketu to pay 15 % of the price money within 15 days from the date of issuance of the said order, and 20 % of the price money within 30 days with 18 % interest, and balance 65 % of the sale price by five years in quarterly installments with 18 % interest. Learned counsel for the petitioner Mr. Dave accordingly submitted that, GSFC was more inclined to show favour to respondent No.6 hotel Satyaketu than to realise the outstanding dues. It is accordingly submitted that, had the respondents Corporations were serious about realising outstanding dues they would not have sold the property to respondent No. 6 in the aforesaid terms and paying the consideration money by five long years by quarterly installments.

11. Almost all the States have constituted Financial Corporations to promote industries in the States by encouraging small entrepreneurs to participate in economic growth of the country by giving them financial assistance for setting up small and medium scale industries. Section 25 (1) (g) of the Financial Corporation Act provides that, the Corporation may grant loans or advances to an industrial concern (hotel industry in the present case), are payable within a period fixed by the Corporation. although the activity has multiplied, capital has grown, field operations widened but the disturbing state of affairs which at times surfaces is complete lack of awareness of principles on which these institutions are required to function. More distressing is unreasonable attitude adopted, often by the Corporation, while exercising power under section 29 to take over possession of the unit for default, in repayment of loan. Evil is still greater in transferring the unit as more often the owner stands financially ruined, the Corporation too does not gain much but the transferee comes out, either with a working unit or a unit ready to go at throw away price, in easy installments giving rise to strong apprehensions that everything did not proceed reasonably and fairly. In the instant case also the aforesaid observations of the Apex Court is equally applicable. The sale of the restaurant which had a separate entrance and separate entity could have fetched necessary amount to pay all the dues of the respondents Corporations. No attempt has been made by the respondents Corporations to realise the outstanding dues by selling the independent restaurant situated in mazzanine floor of the hotel complex. Any prudent businessman with the least acumen would have agreed to the proposal of the release of the remaining main hotel building for the sake of recovery of its debts after

selling the independent restaurant of the hotel. The offer made by the petitioner to pay the entire loan amount of Rs. 80.50 lac as per one time settlement should have been accepted by the GSFC. Instead of agreeing to the proposition of the petitioner, the Corporations opted for sale of the entire property of the petitioner at Rs.4.51 crore which is definitely on a very lower side. It was neither in the interest of the respondents nor in the commercial interest. By sale of the property respondents Corporations received a sum of Rs.1.58 crore from Hotel Satyaketu, and has allowed five years time to pay Rs.2.93 crore in 20 quarterly installments. The attitude adopted by the respondents Corporations is contrary to the spirit and scheme of Section 24 of the State Financial Corporation Act.

12. It is submitted by Mr. B.T. Rao, learned counsel appearing on behalf of the respondents Corporations that, the petitioner made persistent defaults in making repayment of the outstanding loan amount. It is also submitted by Mr. Rao that all the cheques issued by the petitioner have been dishonoured by the Bank. It appears that after one time settlement petitioner has paid Rs.42.50 lac by three cheques and all the three cheques were honoured by the Bank and have been deposited against the account of the respondent. Mr. Dave learned counsel appearing on behalf of the petitioner however very fairly submitted that, only one cheque was dishonoured by the Bank and other cheques were all honoured and deposited in the account of the respondent. The respondents could not produce any paper showing any of the cheques have been dishonoured by the Bank. It is true that the petitioner has failed to make payment of the loan amount in time but inspite of the fact that the hotel was taken over by the respondents Corporations, the petitioner paid part of the outstanding dues , that is out of Rs.1.23 crore, petitioner has paid Rs.42.50 lacs during period from 1997 to 1999. The Corporation has again took over possession of the petitioners hotel in June 1999 and thereafter the Corporation is not allowing the petitioner to run his business in the hotel premises. In spite of that, the petitioner has paid Rs.51.84 lacs to the Bank of Maharashtra as on 30-9-2000. Therefore it cannot be said that the petitioner is not serious about repayment of outstanding loans. It is not only argued by Mr. Dave learned counsel for the petitioner, but it is clearly stated in the petition that the petitioner will repay the outstanding balance of the respondents Corporations as per one time settlement within SEVEN DAYS from the date of the order. Mr. Rao learned counsel appearing on

behalf of the respondents Corporations however argued that the petitioner has failed to comply with the terms of one time settlement and therefore the scheme has been cancelled. But no paper has been produced in the case to show that the respondent has cancelled one time settlement. On the contrary, learned counsel for the petitioner argued that the respondents Corporations have extended the period from time to time for payment of dues as per one time settlement. In the present case it is evident that inspite of requests by the petitioner for additional loan after it suffered huge damage in the flood of 1994, respondents did not come forward to revive the industry. In spite of lack of funds, the petitioner was carrying with the business and was improving its conditions so as to enable it to pay the outstanding dues. No explanation has been given by the respondents Corporations why it did not come forward to rehabilitate the petitioner while the petitioner suffered huge loss and damages in the flood of 1994. The object of the Corporation is to promote industries in the State but this helping attitude was completely absent on the part of the respondents Corporations in case of the petitioner. Even when the petitioner has agreed to pay the entire dues of the Corporations at one time, they did not agree and instead they proceeded with the auction sale.

13. The Corporation has been given statutory right to take over possession and management of the defaulting unit or hypotheca or both, including the right to sell and realise the loan or advance due from the unit or debtor. The Corporation is an instrumentality of the State. The Corporation or its employees or officers are bound to act reasonably and fairly in dealing with the property of the debtor. The exercise of the power of discretion in its dealing would be subject to the same constitutional or public law limitation as the government. The Corporation also equally must conform its action with the same standard that meets the test of justness, fairness, reasonableness and relevance. Section 29 of the State Financial Corporation Act gives wide power to the Corporation for attachment and sale of the property. The exercise of such wide power has far reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. The exercise of discretion should be objective. Test of reasonableness is more strict. Corporation under such circumstances should act fairly and in a reasonable manner. An arbitrary action is ultra vires. The power under section 29 of the act to take possession of a defaulting unit and transfer it by sale requires the

authority to act cautiously, honestly, fairly and reasonably. Default in payment of loan may attract Section 29. But that alone is insufficient either to assume possession or to sell the property. Neither should be resorted to unless it is imperative. The set back of the unit due to the flood of 1994 was beyond the control of the unit holder, and as a consequence there was default in payment of the outstanding loan. However, it appears that the petitioner has paid substantial amount towards the outstanding loan during the year 1997 to 1999.

14. Having regard to the facts & circumstances of the case, I am of the view that the respondents Corporations should have allowed an opportunity to the petitioner to make the entire payment of the outstanding dues as per one time settlement before proceeding with the sale. However, having regard to the facts & circumstances as stated above, I am of the view that the respondent Corporations have failed to comply with the guidelines issued by the Apex Court in case of Mahesh Chandra (supra). The request of the petitioner to sell part of the property that is the restaurant in the mazzanine floor of the hotel has not accepted by the Corporation and the Corporation did not assign any reason for not accepting the aforesaid offer of the petitioner. The respondents have failed to properly assess the market value of the petitioners' property and the petitioner has not been intimated about the valuation made by the respondent Corporation. There is also doubt about the fairness of the respondents Corporations in the matter of settling the price with the respondent No.6 Hotel Satyaketu, who did not offer any price at the time of tender and allowing long five years time to pay the consideration money by respondent No.6, does not appear to be a reasonable one. In view of the aforesaid facts & circumstances, I am of the the view that the respondents Corporations have failed to follow the guidelines issued by the Apex Court in Mahesh Chandra's case (supra). On negotiations it was said to have been raised to Rs.4.51 crore, but deferred payment of initial deposit of 15 % and thereafter 20 % after certain period and within five years balance 65 % on quarterly installments have been allotted to respondent No.6 Hotel Satyaketu. This solicitous attitude at the expense of the petitioner appear to be unjust and unfair and not reasonable for a prudent owner to accept such an offer . The petitioner himself prior to the sale offered to clear the entire dues of the respondents Corporations. Sectin 29 does not exclude the application of principles of natural justice. Nothing prevented the respondents Corporations to have

given the petitioner a chance for payment thereof at reasonable installment with interest thereof. Nothing prevented them to release the main hotel building after selling the restaurant part before accepting the tender of respondent No.6 . An opportunity should have been given to the petitioner as to why such an offer of respondent No.6 should have been accepted. The petitioner could have come forward to give his own offer or to have brought third parties with higher offers. No such bona fide actions have been taken or attempted by the respondents Corporations. Thus the act smacks lack of bona fides or reasonableness. Thus the sale of the property is vitiated by unjust and unreasonable act on the part of the respondents Corporations or its officers, or employees and is liable to be set aside. The possession given to respondent No. 6 is illegal and immediately be resumed by the Corporations. Respondent No.6 claimed to have improved the hotel premises, but this is subject to litigation attracting the doctrine of lis pendendes under section 52 of the Transfer of Property Act. However, learned counsel for the petitioner Mr. Dave agreed to purchase the properties that has been brought by respondent No.6 to the petitioner's hotel premises at a price at which the respondent No.6 has purchased the same. This is a reasonable and fair submission on the part of the learned counsel for the petitioner. I hope and trust that the petitioner will purchase the property from the respondent No.6 at which it is purchased by respondent No.6.

15. The sale is accordingly set aside. The Corporations should immediately resume possession of the hypotheca sold. It is open to the petitioner to pay the entire liability and have the hypotheca redeemed as per the contract. If it is not possible, the respondents Corporations may initiate the sale of restaurant situated in the mazzanine floor and if by the sale proceeds of the restaurant at the mazzanine floor can satisfy the outstanding dues of the respondents Corporations, then they shall release the remaining property of the petitioner. If the sale proceeds falls short of the outstanding dues, the respondents Corporations may give six months time to the petitioner to pay the outstanding dues. If the petitioner fails to pay the entire outstanding dues to the respondents corporations, then the Corporations may proceed with the sale of the property of the petitioner in the open auction after giving wide publicity in the press. The transferee respondent No.6 would be entitled, if available at law, to proceed against respondents Corporations for such reliefs as is open to him in law for damages.

16. The petition is accordingly allowed. The writ of certiorari is issued quashing the sale. Mandamus is issued to respondent Corporations to immediately resume possession of the hypotheca and implement the directions contained in the judgment. Rule made absolute accordingly. The parties to bear their own costs.

Dt: 18-10-2000

(P.K. Sarkar, J)

FURTHER ORDER:

I have heard Mr.Bharat T. Rao, learned Counsel appearing on behalf of the respondents Corporations, who prays for staying the operation of the judgement and order passed today. Mr. Amar Dave, learned Counsel, on instruction from the petitioner submitted that within seven days, no change of situation will take place, and in view of the statement of Mr.Dave I do not find any reason to stay the operation of the judgement and order passed today.

18-10-2000 (P.K.Sarkar, J.)

/vgn.